उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(13)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.697/2001

APPELLANT Shankar Nagesiya, son of Kisna Nagesiya, aged 25 years, resident of Village Jaargeem, P.S. Shankargarh, District Sarguja (C.G.)

VS

RESPONDENT State of Chhattisgarh, through S.H.O. P.S. Shankargarh, District Sarguja (C.G.).

Present:

Mr. K.K. Singh, Advocate for the appellant.

Mr. Ashish Shukla, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(25th April, 2007)

Per L.C. Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentences dated 22nd June, 2001 passed by learned Sessions Judge, Sarguja, Ambikapur in S.T. No. 251/2000 whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC for committing murder of Chhotan, sentenced him

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to undergo R.I. for life. The accused/appellant has also been convicted under Section 325 of IPC for causing grievous injuries to Jatni Bai and sentenced to undergo R.I. for two years.

The case of the prosecution, in brief, is that four hens & one cock of Chhotan (since deceased) died and he was doubting that accused Shankar has given poison to his hens & cock on account of which they have died. Therefore, on 17.6.2000 at about 10.00 p.m. in the night Chhotan started abusing the accused, on which the accused came with the lathi and attacked Chhotan with the lathi on his head as a result of which he succumbed to the injuries. When the mother of Chhotan namely Jatni Bai tried to intervene, the accused assaulted her also with the lathi on her hand as a result of which she sustained fracture injury. The matter was reported in the Police Station Shankargarh by Bhikuram (PW-1) on which F.I.R. (Ex.P-2) was registered. Injury of Jatni Bai was examined by Dr. M.C. Jain (PW-3). Dead body of Chhotan was sent to Primary Health Centre, Shankargarh for postmortem examination where Dr. (Smt.) J. Kujur (PW-5) conducted the postmortem on the body of deceased, prepared the report Ex.P-5 and opined that cause of death was shock & haemorrhage due to head injury. Inquest (Ex.P-11) on the body of deceased Chhotan was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Ambikapur, who in turn committed the case to learned Sessions Judge, Ambikapur where the prosecution in order

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to establish the charges against the accused/appellant examined six witnesses. Statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime. Accused/appellant examined Sonsai (DW-1), Sukhu (DW-2) & Vishwanath (DW-3) as defence witnesses.

Learned Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. K.K. Singh, Advocate for the appellant and Mr. Ashish Shukla, Additional Public Prosecutor with Mr. Akhil Mishra, P.L. for the respondent/State.

Mr. Singh has not disputed the homicidal death of Chhotan. Moreover, Jatni Bai (PW-2), an injured witness & mother of deceased, has categorically stated that the accused/appellant assaulted the deceased with the lathi and to that extent the above evidence of Jatni Bai has been corroborated by the father of accused namely Kishna Nagesiya (PW-4). PW-5 Dr. Kujur has stated that she conducted postmortem on the body of Chhotan and noticed that there were two injuries, skull bone was fractured, frontal & parietal bones were also fractured, membrane of brain was ruptured, the cause of death was shock & haemorrhage and the death was homicidal in nature.

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Therefore, in view of the above ocular and medical evidence, it is established that the death of Chhotan was homicidal in nature.

As far as the involvement of accused/appellant in the crime in question is concerned, Jatni Bai (PW-2), mother of deceased, has categorically stated that on the fateful night the accused attacked Chhotan on his head with the lathi. When she tried to intervene, accused assaulted her also on account of which she sustained injury. On that day the deceased was saying that since accused has given poison to his hens & cock, therefore they died. Thereafter, the accused came with lathi and attacked the deceased. PW-4 Kishen Nagesiya, who is father of the accused, has stated that on the fateful day the deceased was abusing his son, therefore, his son left the house and thereafter he heard the commotion from the side of the house of Chhotan on account of quarreling between Chhotan & Shankar, he immediately rushed towards that side and he brought Shankar back to his house.

Therefore, from the above evidence it is established that the accused/appellant attacked the deceased with the lathi as a result of which he sustained fatal injuries on his head and his frontal & parietal bones were also fractured, which has been established by the evidence of doctor (PW-5) who has stated that postmortem was conducted by her and she noticed that frontal & parietal bones of Chhotan were fractured. Even in that process the accused assaulted Jatni Bai (PW-2), mother of deceased, also when she tried to intervene and as a result of which she also

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sustained fracture injury of the radius bone of her hand, which has been corroborated by the medical evidence of PW-3 Dr. M.C. Jain & PW-5 Dr. Kujur, who examined the injuries of Jatni Bai. Therefore, the involvement of the accused/appellant in committing the murder of Chhotan and inflicting grievous injury to Jatni Bai (PW-2) is established.

Learned counsel for the accused/appellant argued that the prosecution has not been able to establish that the accused/appellant attacked the deceased with an intention to cause his death, as the deceased was doubting that his hens & cock died due to poison given by the accused, therefore, he was abusing the accused/appellant and on hearing the abuses the accused/appellant came out from the house and assaulted Chhotan with the lathi.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

Having heard learned counsel for the respective parties, we have considered the evidence. It has come on the record that as the deceased was doubting that his hens and cock died on account of poison given by the accused and that is why on the fateful night he was abusing the accused and hearing the abuses by the deceased, the accused went towards the deceased and attacked him with the lathi as a result of which he sustained fatal injuries on his head and died. Therefore, from the above facts it is established that the deceased was abusing the accused and that is why he came and attacked him. There is nothing on record to show that the

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accused attacked the deceased with the intention to cause his death, but it can safely be inferred that while attacking the deceased, the accused had definite knowledge that he may likely to cause the death of deceased, therefore, offence under Section 304 Part II of the IPC is established against the accused/appellant.

In the result, the appeal filed by accused/appellant partly succeeds and his conviction under Section 302 of IPC and sentence imposed upon him under that section are hereby set aside and he is acquitted of the said charge. Instead thereof, he is convicted under Section 304 Part II of the IPC and sentenced to undergo R.I. for 10 years. The conviction of the accused/appellant under Section 325 of the IPC and sentenced imposed upon him under that section are maintained. It is stated that the accused/appellant is in detention since 20.6.2000 till today, therefore, he shall be entitled for set-off for the above detention period against the sentence imposed upon him.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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